IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9526 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRABHATSING P CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein by way of this petition under Article 226 of the Constitution of India has challenged the order of detention passed by the District Magistrate,

Banaskantha at Palanpur on 13.7.2000 in exercise of the powers conferred upon him under section 3(1) of Gujarat Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner was detained from 1.8.2000 in pursuance of the above said order.

#. The grounds of detention denote that 2 offences under the Bombay Prohibition Act were registered against the petitioner before Palanpur City Police Station and Amirgadh Police Station on 2.5.2000. The detaining authority considered the investigation papers in the above said crimes and also considered the statements of two witnesses who on assurance of anonymity offered their statements before the concerned authority that the petitioner was dealing in illegal liquor and was a head strong person. It is also stated by the witnesses that the petitioner was an obstruction to public order. From the above material the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(c) of the Bombay Police Act and hence the impugned order.

#. Learned advocate Mr. C.B.Dastur for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Various grounds were urged at the time of hearing. But from the record and rival contentions it clearly appears that the facts of this case is squarely covered by a decision of this court in Jakirbhai Rahimbhai Nagori vs.. District Magistrate, Mehsana & ors. as reported in 1996(1) GLH 300. It is an established fact that to claim privilege under section 9(2) of the PASA Act the detaining authority may refer to some contemporaneous document to arrive at subjective satisfaction. In the case of Jakirbhai Nagori (Supra) this court has observed that the claim of privilege by the detaining authority on the basis of endorsement "verified" was not genuine. This court in the case of Jakirbhai Nagori (Supra) relied upon the observations of the Division Bench of this court in the case of Koli Ashwin vs. State of Gujarat in Special Cri.Application No. 1812 of 1993 decided on 19.9.1994 which are as under:

" However, as is well established, for exercising the power under section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that

he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Die. sap. who apparently has put it pursuant to an instruction received from the detaining authority for V-8 horrifying the statement, there is no other material"

#. This court as stated above ruled that the claim of privilege under section 9(2) of the PASA Act to keep the identity of the witness secret was not genuine; while in this case when we turn to the statement of the witnesses none of the statement is even verified by the detaining [authority and only he has placed reliance upon the verification made by the police officer. Therefore, there is no contemporaneous record was to the detaining authority by which the detaining authority reached to subjective satisfaction and claimed privilege under section 9(2) of the PASA Act. Therefore there is no hesitation in observing that the privilege claimed by the detaining authority under section 9(2) of the PASA Act is not genuine and the order of detention of this ground alone is required to be set aside.

#. In view of the above discussion the order passed by the District Magistrate, Banaskantha Palanpur on 13.7.2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside.

#. The petitioner-Prabhatsinh P Chauhan is hereby is at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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